

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:05-CV-00329-TCK-SAJ
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

STATE OF OKLAHOMA’S MOTION FOR ORDER IMPLEMENTING AND ENFORCING RULES FOR DISCOVERY OF ELECTRONICALLY STORED INFORMATION AND MEMORANDUM IN SUPPORT THEREOF

COMES NOW the Plaintiff, the State of Oklahoma, *ex rel.* W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, (hereinafter “the State”) pursuant to Fed. R. Civ. P. 26 and 34 and Local Civil Rule 7.2 and hereby respectfully requests that the Court enter an Order implementing and enforcing the rules for discovery of electronically stored information as set forth in more detail herein and in the accompanying proposed order.

At the urging of the State, counsel for the parties have met on two separate occasions in an effort to reach an agreement as to the process by which the exchange of electronically stored information (“ESI”) should take place. Despite a detailed plan for ESI production proposed by the State prior to the initial meeting and discussed at length, no agreement has been reached. A true and correct copy of the proposed plan titled “Proposed Electronic Discovery Meeting Check List” is attached hereto and marked Exhibit 1. One of the main points of disagreement is the unwillingness of Defendants to agree to apply provisions of the proposed Fed. R. Civ. P. 26, 33, and 34 prior to their effective date of December 1, 2006. The State hereby requests that the

Court enter an Order which essentially directs the parties to implement and apply those procedures, or procedures similar thereto, immediately to promote the just and efficient handling of ESI production. In further support of this Motion, the State states the following:

In 1970, the Rule 34 of the Federal Rules of Civil Procedure was revised to include within the term “documents” data compilations which can be obtained only through the use of detection devices, *i.e.* computer equipment. *See* Advisory Committee Note of 1970 Amendment to Rule 34(a). Even in 1970, the Advisory Committee knew that “[i]n many instances, this means that respondent will have to supply a print-out of computer data.” *Id.*

Fast forward to today, thirty-six years later, with the many advances in technology, the need for defined procedures for the production of ESI is ever-increasing. The recent amendment to Rules 26, 33 and 34, effective in December, 2006, will do much to define and focus parties on the process that must be adhered to in today’s increasingly paperless age. Litigants already recognize the need for discovery of ESI. Production requests generally and regularly define “documents” to include electronically kept and maintained information. Even if not specifically so defined, parties regularly request such information separately.

Under the new federal rules parties will be required to meet and confer regarding provisions for disclosure or discovery of ESI. ESI will be required disclosure material in initial Rule 26 disclosures. And, when specifically requested, the requesting party may specify the form in which ESI is to be produced. In the instant case, written discovery is progressing. Much of the requests for information will necessarily involve production of ESI. Both the State and numerous Defendants have pending discovery responses due within a short period of time, prior to December 1, 2006. The definition of “documents” in the outstanding discovery requests includes ESI. The State suggested that the parties apply the new discovery rules prior to the

effective date, but Defendants have refused. The State requests that the Court enter an Order setting forth the procedure by which the parties will meet and confer and arrive at a process for production of ESI which implements most if not all the guidelines set forth by and to be implemented within the new Fed. R. Civ. P. 26, 33 and 34 effective December 1, 2006 as set forth in the accompanying proposed Order attached hereto as Exhibit "A". The State is confident that this process will assist the parties toward efficiently retrieving the ESI in a workable format for access by all concerned.

WHEREFORE, the State prays that this Court enter an Order implementing and enforcing rules for discovery of electronically stored information prior to the effective date of the most recent amendments to the Fed. R. Civ. P. 26, 33 and 34.

Respectfully Submitted,

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